WILLIAM HENRY WEAVER

IBLA 72-88 Decided December 7, 1972

Appeal from a decision (A-052901) of the Alaska State Office, Bureau of Land Management, declaring notice of location unacceptable for recordation in part and rejecting homestead final proof in part.

Affirmed.

Federal Employees and Officers: Authority to Bind Government

Rights not authorized by law cannot be acquired through reliance on erroneous information given by employees of the Bureau of Land Management.

Homesteads (Ordinary): Lands Subject To

Final proof for a homestead initiated by settlement is properly rejected to the extent that the land was included in a withdrawal for a power project prior to the time of settlement.

APPEARANCES: T. Stanton Wilson, Esq., and Juliana D. Wilson, Esq., of Wilson and Wilson, Anchorage, Alaska, for the appellant.

OPINION BY MR. FISHMAN

William Henry Weaver has appealed to the Secretary of the Interior from a decision of the Alaska State Office, Bureau of Land Management. The decision, dated September 1, 1971, required the appellant to adjust the boundaries of his homestead claim to an official plat of survey and to submit a homestead entry application. The decision also declared appellant's notice of location unacceptable for recordation in part, and rejected in part the homestead final proof submitted by appellant.

In accordance with the decision, appellant has submitted a homestead entry application describing the lands of his homestead claim according to legal subdivisions so as to conform to the official plat of survey. The appeal has been taken from that part of

the decision which declared appellant's notice of location unacceptable for recordation in part, and rejected in part the homestead final proof.

Appellant's notice of location was filed in the Anchorage Land Office on August 23, 1960, pursuant to 43 U.S.C. §§ 161 et seq. and 270 (1970). At this time no official plat of survey had been filed. Certain lands within appellant's homestead location notice were withdrawn from entry, pursuant to Power Projects 2138 of 1953 and 2215 of 1956. The withdrawals included every smallest legal subdivision adjacent to the Copper and Chitina Rivers, any part of which when surveyed, would be below an altitude of 1,000 feet.

The Land Office informed the appellant in October of 1960 that the lands described in his notice of location were subject to settlement. In April of 1962 the Land Office informed appellant that his claim was almost entirely within the proposed boundaries of Power Project No. 2215; however, in May of 1962 the Land Office informed appellant that his claim was situated almost entirely above the 1,000 foot contour and was therefore subject to settlement.

The information given to appellant by the Land Office was erroneous. The withdrawal of lands for the power projects was not the 1,000 foot contour, but rather, "every smallest legal subdivision * * * any part of which when surveyed will be below an altitude of 1,000 feet * * *." [Emphasis supplied.]

The lands in issue have been surveyed and the plat of survey was filed in the Anchorage Land Office on April 15, 1971. A portion of appellant's claim conflicts with the power project withdrawals as depicted on the official plat of survey.

Appellant argues that his homestead entry should be allowed in its entirety because he had been reassured by the Land Office in May of 1962 that his claim was not within the area withdrawn for the proposed power projects and that he completely relied upon the information he received from the Land Office.

Rights not authorized by law cannot be acquired through reliance on erroneous information given by employees of the Bureau of Land Management. Hiko Bell Mining & Oil Company, 6 IBLA 8 (1972); United States v. Richard Dean Lance, 73 I.D. 218 (1966); 43 CFR 1810.3(c). Therefore, appellant's reliance on erroneous information from employees of the Land Office cannot serve to validate a claim initiated while the land was withdrawn from appropriation. See Ralph J. Mellin, 6 IBLA 193 (1972).

It is equally well settled that final proof for a homestead initiated by settlement is properly rejected to the extent that the land is withdrawn prior to the time of settlement. Richard L. Oelschlaeger, 67 I.D. 237 (1960), aff'd, 389 F.2d 974 (1968), cert. den., 392 U.S. 909 (1968). Therefore, to the extent that the lands embraced within appellant's settlement claim were withdrawn prior to the time of his settlement, his final proof was properly rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1 (1972), the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Newton Frishberg, Chairman

Anne Poindexter Lewis, Member.